MM Dkt. 92-51

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUN 2 1 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Declaratory Ruling Regarding Security Interests in FCC Licenses	)	MMB File No. 910221A
	)	
	)	
	)	

To: The Commission

MOTION TO ACCEPT LATE-FILED COMMENTS

Motion Picture Association of America ("MPAA"), by its attorneys, hereby requests the Commission to accept its late-filed comments in the above-captioned proceeding.

MPAA, as an association, did not become aware until recently of the potential impact on its members of the ruling sought by Hogan & Hartson. MPAA notes that all of the comments and reply comments filed to date, with two exceptions, have been filed by secured lenders or their representatives. Perhaps because of the lack of awareness of the proceeding, other potentially interested parties have not participated. Thus, MPAA's comments will assist the Commission in its deliberation on Hogan & Hartson's petition.

MPAA's understanding is that acceptance of its comments will not delay any decision in this proceeding.

Therefore, MPAA respectfully requests acceptance and consideration of its comments, which are being filed concurrently herewith.

Respectfully submitted,

MOTION PICTURE ASSOCIATION
OF AMERICA

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June 21, 1991

Its Attorneys

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COMMENTS OF
MOTION PICTURE ASSOCIATION OF AMERICA

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Summary

The Commission's law on liens or security interests in FCC licenses is clear: they are not permitted. Although petitioner Hogan & Hartson argues that all of the Commission case law is just "dicta," it does not cite a single instance in the 57 years since enactment of the Communications Act where the Commission has permitted one of its licensees to grant a security interest in an FCC license. Thus, the issue presented by Hogan & Hartson's petition is whether there are any pressing reasons why the Commission should now change (or recommend that Congress change) the law.

Motion Picture Association of America ("MPAA") submits that no such reasons exist and that such a change would, in fact, be contrary to the public interest. For over 50 years, banks and other financial institutions have funded the acquisitions of numerous broadcast stations, notwithstanding their inability to obtain a security interest in FCC licenses. No adverse consequences to the public have resulted from this state of affairs.

During the same period, the prohibition on the grant of a security interest in FCC licenses has provided an important incentive to unsecured lenders to provide goods and services to broadcast stations. The law has also encouraged all creditors to work with broadcasters in financial distress and has thereby promoted continuity of service to the public. Should the Commission propose to change this law, it could have

a dramatic effect on the willingness of program suppliers and other unsecured creditors to provide additional goods and services to broadcast stations, to the ultimate detriment of the public. MPAA therefore urges the Commission to deny the radical proposal advocated by petitioner Hogan & Hartson and its supporters.

Hogan & Hartson argues that the change is necessary to provide fresh capital to broadcasters. But the banks' true motivation is revealed by their argument that the Commission should declare retroactively that its law permits the grant of a security interest in an FCC license. Obviously, a retroactive change in the law is not necessary to encourage new loans. Instead, the banks are seeking a retroactive change in order to validate security interests that they have unlawfully attempted to obtain in past loan transactions for the purpose of increasing the enormous leverage that they already hold over broadcast licensees.

Finally, the ultimate outcome of the Oklahoma City Broadcasting case, the case principally relied upon by Hogan & Hartson as demonstrating the necessity for a change in the law, in fact convincingly demonstrates that the existing prohibition achieves a beneficial purpose. In that case, a secured creditor's inability to obtain a security interest in the FCC license for station KGMC(TV) appears to have contributed to the ultimate transfer of control of the licensee to a broadcaster who intended to maintain service to the community, rather than a sale of the assets to a competing station and a surrender of the license to the FCC.

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COMMENTS OF
MOTION PICTURE ASSOCIATION OF AMERICA

Motion Picture Association of America ("MPAA"), by its attorneys, hereby comments on the Petition for Declaratory Ruling that Lenders May Take a Limited Security Interest in an FCC License, filed by the law firm of Hogan & Hartson. MPAA submits that the public interest would be greatly disserved by a grant of Hogan & Hartson's petition.

I. MPAA's Members Are Significant Unsecured Creditors of Broadcast Stations.

MPAA is a not-for-profit corporation whose members are primarily engaged in the production and distribution of filmed entertainment, including television programs.[1/] MPAA's members provide programming to virtually every commercial television station in America. In general, such programs are provided pursuant to long-term contracts under which payments are made over extended periods of time.[2/] As a consequence of these contracts, MPAA's members are among the largest unsecured creditors of commercial television stations, and it is not uncommon for a television station to owe millions of dollars in long-term liabilities to program suppliers.

MPAA's members probably have more collective experience with television stations in financial distress than any individual lending institution. Program suppliers are frequently the first to know when a station is unable to pay its debts, and because program costs are usually the largest single operating cost for television stations, program

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1/ MPAA members joining in these comments are Paramount Pictures Corporation, Columbia Pictures Entertainment, Inc., Buena Vista Pictures Distribution, Inc., MGM/Pathe Communications Co., Orion Pictures Corporation, Universal City Studios, Warner Bros, Inc., and Twentieth Century Fox Film Corporation.

2/ MPAA members' contracts take a variety of forms. Some members license stations to broadcast programs for a flat fee due upon commencement of the license, but "finance" payment of the license fee over an extended period of time. Other members enter into long-term contracts calling for the payment of fees over the life of the license. In both cases, however, the agreements contemplate long-term payment schedules based on the perceived credit-worthiness of the broadcast station. We therefore refer to both types of program contracts in these Comments as "extensions of credit."

suppliers typically are intimately involved in work-outs or bankruptcy proceedings.

MPAA is concerned that Hogan & Hartson's petition has received very little public scrutiny. As Electronic Media has pointed out, Hogan & Hartson's proposal "should cause station owners to react with alarm." "Banks Shouldn't Hold Licenses," Electronic Media at 14 (May 20, 1991) (attached hereto as Appendix A).

In support of its petition for declaratory ruling, petitioner Hogan & Hartson argues first that the prohibition on the grant of a security interest in an FCC license is dicta, unsupported by precedent or policy. (Petition at 5-12.) But the law is and has long been clear: a security interest in an FCC license is not permitted. See Stephen Industries, Inc. v. McClung, 789 F.2d 386, 390-91 (6th Cir. 1986).

For years, the prohibition was implemented by the Commission's staff at the application-processing level. For example, in Radio KDAN, Inc., 13 R.R.2d 100 (1968), aff'd on other grounds sub nom. Hansen v. F.C.C., 413 F.2d 374 (D.C. Cir. 1969), the Commission very explicitly held that had the purported "mortgage" of the FCC license "been submitted to the Commission as required by our rule at the time of its origin [nine years earlier in 1959], it would have been rejected for two vital reasons: (1) it purported to mortgage the KDAN license; (2) and it reserved to [the prior licensee] a reversionary interest . . . ." Id. at 102. Thus, the

Commission pointed out the obvious: in those years, financing documents were generally submitted to the Commission as part of the assignment/transfer-of-control application process.[3/] The FCC's staff policed these agreements at the processing level and rejected attempts to grant security interests in FCC licenses. Accord Kirk Merkley, Receiver, 94 F.C.C.2d 829, 831-32, 839, recon. denied, 56 R.R.2d 413 (1984), aff'd mem., 776 F.2d 365 (D.C. Cir. 1985) (parties to assignment application had been required to delete provision giving seller a prohibited reversionary interest).

Thus, Hogan & Hartson's petition presents the policy question of whether there is any pressing reason or need to change long-standing law. Hogan & Hartson itself does not offer any policy reasons to justify such a change other than to

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3/ In 1981, the Commission eliminated the requirement that financial documentation be filed with assignment/transfer-of-control applications. Financial Qualifications, 49 R.R.2d 1291 (1981). In dissent, Commissioner Fogerty pointed out:

> the deleted documentation requirement has served other critical review functions than only the assessment of an applicant's financial ability to construct and operate a broadcast facility. In particular, the required documentation (specifying bank loan commitments, other financing arrangements, security interests, etc.) has provided a basis for review of applicant compliance with the Commission's multiple and cross-ownership rules and Section 310 of the Communications Act limiting foreign ownership of broadcast facilities. Without this documentation, the Commission will have no real check on adherence to these rules and policies.

Id. at 1293 (emphasis added).

make a generalized statement that financing has become more difficult to obtain, which Hogan & Hartson attributes in part to the decision in In re Oklahoma City Broadcasting Co., dba KGMC-TV, Debtor, 112 Bankr. 425, 68 R.R.2d 94 (Bankr. W.D. Okla. 1990). (Petition at 1-5.)

Hogan & Hartson's petition, however, raises a number of important policy questions. The broadcasters who commented have already raised the concern that grant of the Hogan & Hartson petition could effectively wrest control of the station from the hands of the licensee. (See Comments of Capstar Communications, Inc., et al.)[4/] In these comments, MPAA addresses two additional important Commission policies implicated by Hogan & Hartson's petition.

4/ Even under existing law, banks and other senior secured lenders hold a great deal of leverage over broadcast stations. This leverage is obtained through various covenants and default provisions contained in credit agreements with broadcast licensees, and also because such banks generally require the pledge of all of the stock of corporate licensees. If secured lenders were permitted to obtain a direct security interest in an FCC license, this security interest, when coupled with the rights they already possess, would vest such enormous leverage in secured lenders in default situations as to be tantamount to de facto control. As Electronic Media notes:

> If the FCC changes the rules, it would raise the possibility of a bank, with no more stake in broadcasting than getting a quick financial return, suddenly calling the shots on a struggling station's programming, news and personnel decisions.

See Appendix A.

First is the Commission's policy to encourage diverse, high-quality programming. See, e.g., Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997, 3010 (1990) ("Safeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission.") As shown below, this policy is best served by the existing prohibition on the grant of a security interest in an FCC license; it provides program suppliers with incentives to extend credit to broadcast stations pursuant to long-term programming agreements.

Second is the Commission's policy of encouraging continuity of service and discouraging haphazard restructuring of the industry. See Cowles Broadcasting, Inc., 86 F.C.C.2d 993, 1013 (1981), aff'd sub nom. Central Florida Enterprises, Inc., 683 F.2d 503 (D.C. Cir. 1982), cert. denied, 460 U.S. 1084 (1983). MPAA agrees with the National Association of Broadcasters that this policy is best served by creating incentives for lenders--including both secured lenders and unsecured lenders--to work with broadcast borrowers in distress in such a way that continuity of service to the viewing public is encouraged. The Commission should avoid an unnecessary change in the law that could lead to sudden, chaotic transfers and diminished public service. (See Reply Comments of the National Association of Broadcasters at 4-5.)

II. The Hogan & Hartson Petition Should Be Denied As Contrary to the Public Interest.

A. The Public Interest Is Served By Encouraging Program Suppliers and Other Unsecured Creditors to Extend Credit to Broadcast Stations.

In its petition for declaratory ruling, Hogan & Hartson proposes a radical restructuring of the financial backdrop against which commercial television broadcasting has developed in America. Before the Commission entertains such a dramatic change in the law--particularly, the retroactive change sought by the petitioner and its supporters--careful consideration should be given to its potential effect on broadcast licensees, unsecured creditors, and the public.

It has long been clear, as a matter of Commission law and policy, that a security interest in an FCC license is invalid and unenforceable.[5/] Indeed, not one single commenter has claimed that its understanding of the law has ever been otherwise. Security Pacific in fact acknowledges that the "inability of [it] and other lenders to take even a limited security interest in a commission license has always made for a cumbersome process . . . ." (Comments of Security Pacific Corporation at 1.) Yet these banks financed hundreds of acquisitions of broadcast stations in the 1980s, notwithstanding their inability to obtain a security interest in an FCC license. Thus, even the banks can only speculate,

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[5/] <u>See</u> discussion at pp. 3-5 <u>supra</u>.

without substantiation, that the alleged, current shortage of bank credit for the purpose of financing acquisitions would be alleviated by a grant of Hogan & Hartson's petition.6/ Even General Electric Capital Corporation (at p. 3 of its Comments) candidly concedes that "such a ruling is not likely to result in a recommitment by lenders of substantial capital to the communications industry."7/

In fact, program suppliers have extended billions of dollars of credit to broadcast stations in reliance on existing law, which assures all creditors that, in the event of a default or bankruptcy, any value of the station attributable to FCC licenses will be available to both secured and unsecured creditors pari passu--i.e., on a pro rata basis. Thus, the current law has apparently provided adequate protection to bank lenders, while encouraging program suppliers to enter into long-term programming agreements with television stations, and these agreements are obviously of substantial, direct benefit to the public that these stations serve. It is only now during the current recession that the banks are clamoring for additional protection to be retroactively granted that would

6/ (See, e.g., Comments of American Security Bank at 1-2; Comments of Ameritrust Company National Association, et al., at 26; Petition at i. See also Joint Comments of Capstar Communications, Inc., et al. at 2.)

7/ See also "Law Firm Looks to Give Lenders Piece of Broadcast Action," Broadcasting at 63 (March 4, 1991) (quoting a partner at Hogan & Hartson, "I'm not suggesting that banks will make loans they otherwise would not . . . but this gives them an additional comfort zone.").

give them priority over programmers and other lenders that are as much at risk as the primary lenders in the current economic environment.

Generally, senior debt of the type that would be collateralized by a security interest in an FCC license is incurred in order to finance the purchase of a station or to "leverage" an existing investment. The proceeds of such loans are not necessarily used directly to improve service to the public. In contrast, the unsecured credit extended by program suppliers is used for one purpose--to buy programs. It would be incongruous as a matter of communications policy to provide incentives for banks to lend more money to support higher prices for stations, to the detriment of expenditures for items, such as programming, that are of immediate benefit to the public.8/

The prohibition on the grant of a security interest in an FCC license has thus promoted the extension of credit for

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8/ In this regard, one matter should be clarified. Contrary to the suggestion of several commenters, the existing prohibition on the grant of a security interest in FCC licenses should not prevent or discourage investment in new technology. New technology means new equipment, and equipment is tangible personal property which can be purchased pursuant to a lease agreement or financed with a purchase money security interest. In both cases, the seller/creditor is able to advance credit on a secured basis (see, e.g., UCC § 9-312(4)), and presumably credit is not extended to purchase equipment for more than its worth. Thus, it is plainly incorrect to argue that investment in new technology will be encouraged by a radical change in the law to permit the grant of security interests in FCC licenses.

the purpose of funding the acquisition of programming and other audience-oriented goods and services. A reaffirmation of this rule of law would more directly benefit the public than a radical reversal designed to cure an alleged shortage of credit, which appears not to have been caused by any FCC policy, but rather by the recession, the well-known debacle in the savings-and-loan industry, and poor credit decisions by banks and other lending institutions in the 1980's.

B. The Public Interest Is Further Served By Encouraging All Lenders, Both Secured and Unsecured, to Work With Broadcasters and Not to Force Stations Off the Air.

As the National Association of Broadcasters has observed, current law also encourages secured lenders to work with broadcasters. (NAB Reply Comments at 4-5.) Since under the current law a secured creditor cannot foreclose against an FCC license, the remaining assets of a broadcast debtor that can be sold at a foreclosure would be of relatively little value. In other words, assets such as the transmitter, antenna, and studio equipment have little value (compared to the value of an operating station) when severed from the FCC license that authorizes their operation. Thus, the inability of a secured lender to initiate a foreclosure action directly against an FCC license forces a secured lender to attempt first to resolve cash flow problems and other financial difficulties through negotiation and restructuring.

Existing law also provides incentives for program suppliers to continue to work with television stations that encounter financial difficulties, which often include the stations' inability to meet current payment obligations under programming agreements. Because under existing law unsecured creditors share pari passu any proceeds from a bankruptcy or foreclosure sale attributable to an FCC license, program suppliers have a financial incentive to continue to work with the station, instead of immediately terminating their program agreements for non-payment and stopping future program deliveries. Obviously, continued carriage of quality programming serves the public's interest far more than its discontinuance.

Hogan & Hartson's proposal would change the incentives for both secured and unsecured creditors to continue to work with a station by permitting the foreclosure sale of an FCC license (along with a handful of "hard" assets such as the transmitter and antenna in order to avoid the FCC's proscription on assignments of bare licenses). Notwithstanding the willingness of program suppliers and other secured creditors to work with a broadcast licensee in financial difficulty, a secured creditor could unilaterally deprive a station of all other assets--including its employees, its syndicated programs, and its local news and public affairs operation--a situation antithetical to the Commission's policy of encouraging continuity of service. (In fact, this is precisely the outcome sought by the bank in the Oklahoma City case. See pp. 17-18 infra.)

In this respect, the Commission's current policy of permitting the pledge of all of the stock of a corporate licensee is consistent with its policy of encouraging continuity of programming service. As at least three of the commenters recognize, one who purchases the stock of a corporate licensee at a foreclosure sale buys the corporation as a going concern with all of its assets. (See Joint Comments of Ameritrust Company National Association, Chemical Bank and New Bank of New England, N.A. at 21.) Continuity of service to the public is thus preserved. Accordingly, it is not true that a pledge of all of the stock of a corporate licensee is virtually equivalent to the grant of a security interest in an FCC license, as contended by petitioner (Petition at 22-23). If they were equivalent, banks and other senior lenders would be satisfied with a stock pledge and would not be insistent upon obtaining the right to a security interest in an FCC license also.[9/]

Of course, some secured creditors resent the fact that under current Commission law they are compelled to work with broadcasters in default or bankruptcy situations. Many of the

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9/ In the absence of more information about current bank lending practices, MPAA takes no position on the lawfulness of the requirement imposed by some lenders that all FCC licenses be owned by a subsidiary separate and apart from the other assets and employees of the broadcast station. (See Comments of Ameritrust, et al. at 21-22.)

lending institutions filing in support of Hogan & Hartson's petition candidly admit that their motivation in seeking a change in the law is to permit them "to pull the trigger" quicker on broadcasters experiencing financial difficulty. For example, Canadian Imperial Bank of Commerce complains that under existing law "[o]ur experience indicates that operators in financial difficulty will seek to hold onto the license, even if it is at the expense of creditors." (Comments at 3.) This troubles Canadian Imperial Bank, which argues that it should have "more say in the ongoing status of the license" (id. at 5). General Electric Capital Corporation ("GECC") argues that broadcasters have too much bargaining power under existing law. Citing the hostile tender-offer cases as precedent, GECC urges the Commission to permit secured creditors such as GECC to take over a broadcast license, without prior FCC consent, upon the occurrence of any "default." A "default" would apparently include monetary defaults--i.e., failure to pay--as well as non-monetary defaults such as a breach of a covenant in the loan agreement. The potential for mischief and disruption of service from these proposals is unlimited: for example, under GECC's concept, a secured creditor could take over a station because the licensee, in the exercise of its discretion, decided to make programming changes, such as a change in network affiliation, in violation of a covenant in the loan agreement.10/

Indeed, it appears that some of the commenters may already be seeking to obtain undue control over broadcast licensees. Ameritrust Company National Association, Chemical Bank and New Bank of New England, N.A., in their joint comments, argue that secured lenders should be able to obtain a security interest in a licensee's right under Section 310(d) of the Communications Act to assign its FCC licenses to a third party of its choice, subject to the Commission's prior approval. (See Comments at 11-13.) It appears that these lenders may want the right to initiate the sale of FCC licenses. (Id.)11/

10/ According to an article in Electronic Media, General Electric Capital in fact "foreclosed" on the Pegasus Broadcasting television stations for just such a technical default. "Although it had been diligent about making interest and principal payments, Pegasus apparently had fallen short on performance standards and other benchmarks based on cash flow projections made four years ago." "Struggling to Stay Afloat; Some Station Owners Fight to Offset Loss," Electronic Media at 1 (Dec. 10, 1990). A correction in Electronic Media a week later noted that General Electric Capital had not actually "foreclosed," but that "Pegasus officials say they were given the option to sell the stations [to GECC], after meeting their payments on time . . . ."

11/ In fact, these commenters (joined by other banks) have filed a complaint in Federal bankruptcy court seeking a ruling that they have a security interest not only in the bankrupt debtor's FCC licenses, but also in its rights under Section 310(d) of the Communications Act. See "Complaint to Determine the Validity of Lien," filed April 10, 1991, in In re Tak Communications, Inc., Case No. MM

(Footnote continued on next page)

The grant of Hogan & Hartson's petition could thus lead not only to discontinuance of service, but, ultimately, also to a haphazard restructuring of the broadcast industry, a result that the Commission has decided as a matter of communications policy should be avoided. See Cowles Broadcasting, Inc., 86 F.C.C.2d 993, 1013 (1981), aff'd sub nom. Central Florida Enterprises, Inc., 683 F.2d 503 (D.C. Cir. 1982), cert. denied, 460 U.S. 1084 (1983). Banks would be able to force sales of broadcast stations, stripped of all but their "hard" assets, depriving the licensee of its "fundamental right" to select the ultimate purchaser, Albert J. Feyl, 15 F.C.C. 823, 826 (1951), and the community of continuity of service. Public interest considerations therefore require the Commission to maintain existing law prohibiting the grant of a security interest in FCC licenses, thus promoting continuity of broadcast service.

(Footnote continued from previous page)

11/ 11-91-00031 (Bankr. W.D. Wis.) (attached hereto as Appendix B).

The loans to Tak were made beginning September 20, 1988 (see Appendix B ¶ 7), well after the decision of the Sixth Circuit in Stevens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986), in which the court clearly held that a security interest could not be granted in an FCC broadcast license.

III. The Ultimate Result In the KGMC(TV) Case Served the Public Interest; Any Concerns That Secured Lenders Have With Other Aspects of the Decision Should Be Resolved By the Bankruptcy Courts, Not By the FCC.

A consistent theme running through most of the comments in support of Hogan & Hartson's petition is that the FCC should change its law because of a decision of the United States Bankruptcy Court for the Western District of Oklahoma, In re Oklahoma City Broadcasting Company, dba KGMC-TV, 112 Bankr. 425, 68 R.R.2d 94 (Bankr. W.D. Okla. 1990). (See, e.g., Hogan & Hartson Petition at 3-4; Reply Comments of Morrison & Foerster at 4; Comments of O'Melveny & Myers at 2-3; Comments of American Security Bank at 1; Comments of Semmes, Bowen & Semmes at 3.) In their view, the bankruptcy court in Oklahoma City Broadcasting allocated too much value to the FCC license and too little to the assets in which the secured lender held a security interest.[12/]

The ultimate outcome of the Oklahoma City Broadcasting case demonstrates the public interest benefits of the prohibition on the grant of a security interest in an FCC license. As discussed below, the bank in that case wanted to take station KGMC(TV) off the air and to return its FCC license

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12/ MPAA takes no position here on whether the bankruptcy court correctly allocated value to the FCC license in the Oklahoma City Broadcasting case. It is obvious, however, that had the court in Oklahoma City allocated the values in a way more favorable to the bank, the banks would not now be attacking the FCC's prohibition on the grant of a security interest in an FCC license.

to the FCC, to the benefit of a competing independent television station in the market. Thus, as demonstrated below, the outcome in Oklahoma City Broadcasting served the public interest, and the Commission should make no change in its law that would serve to frustrate such an outcome.

The Oklahoma City Broadcasting case involved television station KGMC(TV), Oklahoma City, Oklahoma, which had been the subject of a show cause order on whether the license should be revoked because of an alleged unauthorized transfer of control of the company from Ivan F. Boesky to Seema S. Boesky.[13/] Thirteen months after the Commission issued the show cause order, the licensee sought relief under Chapter 11 of the Bankruptcy Code, and the Mass Media Bureau approved the involuntary assignment of the license for KGMC(TV) to Oklahoma City Broadcasting Company, debtor-in-possession. See Seraphim Corporation, 4 FCC Rcd 8819 (1989).

At issue in In re Oklahoma City Broadcasting Company, 112 Bankr. 425, 68 R.R.2d 94 (Bankr. W.D. Okla. 1990), was the value of the secured claim of NCNB Texas National Bank, N.A. ("NCNB") in the context of a plan of reorganization proposed by the station and its creditors committee. As part of its evidence, NCNB introduced an option contract between NCNB and Heritage Media Corporation, the licensee of television station KAUT, Oklahoma City, one of KGMC(TV)'s competitors. The option

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13/ Thus, the case itself involved unique circumstances.

contract called for the sale of all assets in which NCNB had a security interest to Heritage for $3,000,000. KGMC(TV) was to be removed from the air and the FCC license returned to the FCC. The contract was contingent upon NCNB's foreclosing upon its security interest.14/ The court noted:

> It is significant to the Court that KAUT's $3,000,000.00 offer was made to NCNB, and would make NCNB substantially whole. No direct evidence was presented to the Court as to whether NCNB was financing KAUT's offer, and, if so, the terms of the financing, but it does appear KAUT is also a customer of NCNB.

68 R.R.2d at 97.

Thus, it was in this context of a plan by the bank to take KGMC(TV) off the air that the bankruptcy court ruled that the market value of the assets in which NCNB held a perfected security interest was $2,000,000 and that this was the value of NCNB's secured claim.15/

14/ NCNB had a perfected security interest in all of KGMC(TV)'s assets, except for the FCC license and possibly some film contracts.

15/ MPAA notes that the Bankruptcy Judge merely determined the value of the station's tangible and intangible assets, excluding the FCC license. The Judge made no finding as to the value of the FCC license. The Judge found that the difference between the $2,000,000.00 asset value and the $3,000,000.00 offer represented a "Bounty" which the competitor would pay to eliminate part of its competition and correctly concluded that Bounty was not subject to NCNB's security interest under the Uniform Commercial Code. The import of the Oklahoma City Broadcasting Co. opinion to this proceeding is, thus, vastly overstated.